

SOUTHERN UTAH FUEL COMPANY
RESPONSE TO DIVISION OF OIL GAS & MINING REVIEW
DATED FEBRUARY 24, 1993

Deficiency: R645-301-341

1. The plan must adequately address the revegetation requirements for final reclamation at the breakout areas.

Response:

1. The text has been modified in 3.4.1.2 to describe reclamation procedure for breakout areas.

Deficiency: R645-301-341.250

1. Woody species density standards that were established in consultation with the Division of Wildlife Resources and approved by them need to be incorporated into the plan. These standards are 1000 woody plants per acre at the mine site and 5000 woody plants per acre at the waste rock site.

Response:

1. The woody plant species density for the mine site has been changed to 1000 woody plants per acre on page 3-36 of the MRP. The woody plant species density for the waste rock site has been changed to 5000 woody plants per acre.

Deficiency: 645-301-412

1. The plan must contain a copy of comments concerning the proposed postmining land use from the legal and equitable owners of record of the surface of the permit area. This condition has been satisfied for the Forest Service and UNELCO but not for the land owned by Roger and Ruth Nielsen.
2. The plan needs to contain right of entry information in compliance with R645-301-114.200 for the lands owned by Roger and Ruth Nielsen where the private mineral estate and private surface estate have been severed.

Response:

1. Comments concerning the postmining land use of the tract on which the surface is owned by Roger and Ruth Nielsen et al (W 1/2, NE 1/4, Section 29, T21S R5E) have not been solicited and are not required under 645-301-412 because the proposed postmining land use is NOT different from the premining land use.
2. Right of entry consent by the surface owners required under 645-301-114.210 of the current DOGM regulations dated September 11, 1992 does not apply at this time for the above-described-lands because:
 - a. The Mining Permit issued on May 19, 1987 was specifically "issued pursuant to the Utah Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq." and on the DOGM Underground Mining Rules in effect at that time.
 - b. Section 40-10-11 (2)(f)(i) of the act requires surface owner consent only when the extraction of coal is by surface mining methods in cases where the mineral estate has been severed from the private surface estate. A copy of this section of the act is attached as further information in support of this response.
 - c. The DOGM rules in effect on May 19, 1987 (UMC 782.15(b)) did not require surface owner consent except where the associated surface operations "involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate ..." Surface owner consent was not required under those rules in instances where the coal was to be mined by underground methods. A copy of pages 65 and 66 of those DOGM regulations is attached as further information in support of this response.
 - d. Subsequent to the DOGM permit approval of May 19, 1987, Southern Utah Fuel Company began underground mining activity of the coal on the above described lands. At this time all coal on the tract has been depleted.

- e. No further coal mining will take place on the above described lands under the mining permit renewal currently under review or under any future mining permit renewals.

A copy of Southern Utah Fuel Company's November 18, 1971 "Deed of Underground Coal Rights" for the above described lands is attached to this response only for your information.

Deficiency: R645-302-270

- 3. The plan must adequately address appropriate sections of R645-302-270 for the variance from approximate original contour requirements.

Response:

- 3. The statement in Section 5.5.3.5 that appears to be contradictory has been revised since "pre-SMACRA" highwalls are considered to be "previously mined." The Forest Service approved leaving the highwalls as part of the original MRP plan approval. The highwalls to be retained are of such limited extent compared to the natural cliffs in the drainage that watershed characteristics will not be affected.

Deficiency: R645-301-121.200

- 1. SUFCo must modify the text of page 5-15 to reflect the accurate location of the Quitchupah ventilation entry.

Response:

- 1. The reviewer is referring to the wrong page. Page 5-13 contains the location of the Quitchupah ventilation entry and the incorrect location was revised in the October 1992 submittal as listed in the response document.

Deficiency: R645-301-140

1. Plate 2-1 should be amended as follows: add a legend for the substitute topsoil locations shown on Plate 2-1; and delineate the extent of each of the soil families identified in App 2-2, Map D (as per National Soils Handbook Title 430, Part 605.03(d)(8)(i)(B)[2]); and add known rock outcrops which are shown on Plate 5-3 (as per NSH Title 430, Part 605.03(d)(6)(ii)).

Response:

1. Plate 2-1 has had the legend revised. The rock outcrops shown on Plate 5-3 have been added as well.

Deficiency: R645-301-224

1. The legend on Plate 2-1 should identify the shaded area as a source of substitute topsoil. The slope east of the office complex has been contemporaneously reclaimed. This should be indicated on the map as contemporaneous reclamation and substitute topsoil material as per page 2-14 of the plan.
- 2.c. It is recommended that SUFCo develop a sampling plan for the regraded spoil: to estimate the frequency of sampling per yard, acre or ton of substitute topsoil material during or after final grading. If sampling is conducted after grading, specify planned sampling depth of the substitute topsoil, and whether samples will be composite or segregated by depth.

Response:

1. The legend on Plate 2-1 has been revised. Plate 2-1 has been revised to show the slope east of the office as contemporaneous reclamation and a possible source for substitute topsoil.
- 2.c. The sampling plan has been added on pages 2-9 and 2-14. A random composite sample will be taken every 2000 tons as the substitute topsoil is collected and stockpiled.

Deficiency: R645-301-230

- 1.a. Page 2-10 of the MRP is referred to in the response. This provides an assurance of salvaging topsoil and underlying horizons prior to disturbance. Sections 2.3.1.1, 2.3.2.2, 2.3.2.3, and 2.3.2.5 outline the removal of topsoil and subsoil from new disturbances. For areas with limited A horizon development (Section 2.3.2.3) the depth of soil to be removed and segregated is not specified. Will the operating performance standard for the depth of salvage be according to Section 2.3.1.1.? In otherwords, salvage and storage of A through C horizons for areas of limited A horizon development? Section 2.3.2.3 and Section 2.3.1.1. must indicate an operating performance standard for the depth of salvage for areas with limited A horizon development.

Response:

- 1.a. Pages 2-10 and 2-12 have been revised to clarify to the reviewer the collection practices for thin topsoil areas.

Deficiency: R645-301-240

1. A commitment to replace 6 inches of substitute topsoil over compacted fill will not be comparable to predisturbance soil depths. A minimal 12 inch substitute topsoil cover depth on the lesser slopes equal to or less than 2h:1v and an 8 inch depth on the steeper slopes greater than 2h:1v up to the angle of repose, 1.5h:1v, should be required by the Division. Page 2-18, and bonding calculations should be revised accordingly.
3. SUFCo must provide the Division with cut and fill volumes derived from Plate 5-3 Post Reclamation Surface Configuration and Plate 5-4 Post-Reclamation Cross Sections submitted with the MRP or revise Plates 5-3 and 5-4 to show cross-sections from which reported cut and fill volumes were calculated; and provide within the MRP a supporting discussion of the angle of repose for the spoil slopes to which topsoil will be applied.

Response:

1. The report in Appendix 5-2 by Welsh and Murdock shows that 6" is comparable to predisturbance soil depths for soil types W, O, X, and T. These soil depths are believed to be representative of the site. The site was disturbed some thirty years prior to enactment of SMCRA; therefore a predisturbance soil map is not available.
3. Western followed the explanation submitted in October; Burton did not. Page 3 of Appendix 2-5 clearly states which cross-sections were used for the cut and fill calculations done by Earth Fax. These cross-sections are located in Appendix 2-4 in the SH&B report. The typing error on page 2-19 concerning what slope angles will receive topsoil has been corrected.

Deficiency: R645-301-553.620

1. A revision of Plate 5.2B was found with the submittal which shows limited pre-SMCRA surface facility development with one legend and a second legend with much larger surface disturbance prior to 1977. Please clarify this discrepancy.

Response:

1. The applicant incorrectly referred to the plate showing the surface disturbance prior to SMCRA as Plate 5-1. The correct plate is Plate 5-2B which was submitted. Plate 5.2B shows the limit of surface disturbance prior to 1977 as a boundary line; i.e. the limit of dirt work for pad construction. The structures that were built prior to the enactment of SMCRA are shown shaded. Both legends are necessary because structures have been built after 1977 on the existing pad that was completed prior to the enactment of SMCRA.

Deficiency: R645-301-622

1. Additional information on the Duncan seam has been added to other sections of the MRP but is not included in the description of the Duncan seam on page 6-7.
2. The areal extent of the Duncan seam is not clear from descriptions on pages 5-14a and 6-7.

Response:

1. The description of the Duncan seam on page 6-7 has been revised.
2. The description on page 6-7 has been revised to reflect the unsplit portion as being less than 50 acres to match the description on page 5-14a.

Deficiency: R645-301-624

1. Requests for confidentiality remain in the MRP on page 6-11, in Section 6.2.4.1 under the heading Drill Logs and Chemical Analysis and in Section 6.2.4.3 under Lithologic Logs.

Response:

1. The requests for confidentiality have been revised to comply with R645-301-624.

Deficiency: R645-301-623.300

1. The 1990 Subsidence Report, including Maps 1 and 2, is referenced as part of the MRP but the maps are not included in the MRP.

Response:

1. Copies of Maps 1 and 2 are included for the 1990 Subsidence Report.

Deficiency: R645-301-700

1. The MRP does not contain information on the abandonment of the exploration boreholes that are not being used as piezometers.

Response:

1. All exploration boreholes that have not been used for piezometers have been plugged properly prior to abandonment as required by the regulatory authority. This plugging was the final step in the drilling process prior to abandonment. The text has been revise accordingly on page 6-14.

REGULATION OF COAL MINING AND RECLAMATION OPERATIONS

1979

GENERAL SESSION

Engrossed Copy

H. B. No. 138

By John N. Carr

Genevieve Atwood

Ray Nielsen

Cary Peterson

Mike Dmitrich

AN ACT RELATING TO THE REGULATION OF COAL MINING AND RECLAMATION OPERATIONS; PRESCRIBING THE POWERS AND DUTIES OF THE BOARD AND DIVISION OF OIL, GAS, AND MINING; PROVIDING EXEMPTIONS FROM THE ACT; PROVIDING FOR THE METHOD OF MAKING APPLICATION FOR A PERMIT TO MINE COAL AND THE METHOD OF APPROVING, DENYING AND REVISING PERMITS; PROVIDING FOR A MEANS OF PUBLIC NOTICE AND HEARINGS AND APPEALS FROM DECISIONS OF THE DIVISION AND BOARD OF OIL, GAS, AND MINING; PROVIDING FOR ENVIRONMENTAL PERFORMANCE STANDARDS AND PROVIDING ENFORCEMENT AND PENALTIES FOR VIOLATION OF THOSE STANDARDS; PROVIDING FOR THE DESIGNATION OF LANDS UNSUITABLE FOR SURFACE COAL MINING; AND PROVIDING FOR THE RECLAMATION OF ABANDONED MINES; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT ENACTS CHAPTER 10 OF TITLE 40, UTAH CODE ANNOTATED 1953.

Be it enacted by the legislature of the state of Utah:

Section 1. Chapter 10 of Title 40, Utah Code Annotated 1953, is enacted to read:

CHAPTER 10

40-10-1. The Utah legislature finds that:

(1) Coal mining operations presently contribute significantly to the nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of Utah's coal reserves can only be

insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(7) Each applicant for a surface coal mining and reclamation permit shall submit to the division as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of subsection 40-10-17 (2) (o).

40-10-11. (1) Upon the basis of a complete mining application and reclamation plan or a revision or renewal of same, as required by this chapter, including public notification and an opportunity for a public hearing as required by section 40-10-13, the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this chapter. Within 10 days after the granting of a permit, the division shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) No permit or revision application shall be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

(a) The permit application is accurate and complete and that all the requirements of this chapter have been complied with.

(b) The applicant has demonstrated that reclamation as required by this chapter can be accomplished under the reclamation plan contained in the permit application.

(c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subsection 40-10-10 (2) (c) has been made by the division and the proposed operation of same has been designed to prevent material damage to hydrologic balance outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to section 40-10-24 or is not within an area under study for such designation in an administrative proceeding commenced pursuant to subsection 40-10-24 (2) (unless in the area as to which an administrative proceeding has commenced pursuant to section 40-10-24, the operator demonstrates that prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit).

(e) The proposed surface coal mining operation would:

(i) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but excluding undeveloped range lands which are not significant to farming on the alluvial valley floors and those lands as to which the division finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors in subsection (2) (e) (i), but this

subsection (2) (e) shall not affect those surface coal mining operations which in the year preceding the effective date of this chapter produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the division to conduct surface coal mining operations within these alluvial valley floors.

(f) In cases where the state mineral estate has been severed from the private surface estate, the applicant has submitted to the division:

(i) The written consent of the surface owner to the extraction of state-owned coal by surface mining methods; provided, however, that nothing in this section shall be construed as increasing or diminishing any property rights by the State of Utah or by any other landowner.

(ii) A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(iii) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

(3) The applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any notice of violation. Where the schedule or other information available to the division indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or other laws referred to in this subsection, the permit shall not be issued

(b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including--

- (1) Identification number and date of issuance of the permit or date and amount of bond or similar security;
- (2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;
- (3) The current status of the permit, bond, or similar security involved;
- (4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- (5) The current status of these proceedings.

(c) A listing of each violation notice received by the applicant in connection with any underground or surface coal mining activities during the three-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, or of any provision of the Act, pertaining to air or water environmental protection. The application shall also contain a statement regarding each violation notice, including--

- (1) The date of issuance and identity of the issuing division, department, or agency;
- (2) A brief description of the particular violation alleged in the notice;
- (3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
- (4) The current status of the proceedings and of the violation notice; and
- (5) The actions, if any, taken by the applicant to abate the violation.

UMC 782.15 Right Of Entry And Operation Information

(a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground coal mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) For underground coal mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate

to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area--

- (1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or
 - (2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that under the applicable state law, the applicant has the legal authority to extract the coal by those methods.
- (c) Nothing in this section shall be construed to afford the Division the authority to adjudicate property title disputes.

UMC 782.16 Relationship To Areas Designated Unsuitable For Mining

(a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for the surface effects of underground coal mining activities under 30 CFR 762, 764, and 769, or UMC 764, or under study for designation in an administrative proceeding initiated or under those parts.

(b) If an applicant claims the exemption in UMC 786.19(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(c) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in UMC 761.12(e).

UMC 782.17 Permit Term Information

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the underground coal mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings, for each phase of mining over the total life of the permit.

(b) If the applicant proposes to conduct the underground coal mining activities in excess of five years, the application shall contain the information needed for the showing required under UMC 786.25(a).

170142

Entry No. _____

Recorded 11-22-71 At 2:00 Book 78 Page 496

Robert L. Olcott, Treasurer & Recorder, Sevier County

Request of DeVon Poulson Fee \$2.00

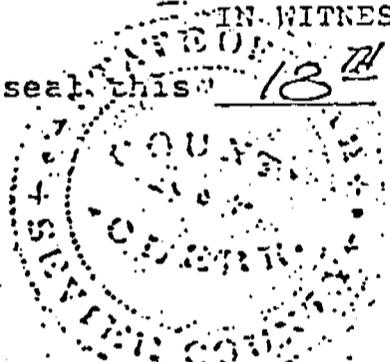
DEED OF UNDERGROUND COAL RIGHTS

SEVIER COUNTY, a body corporate and politic, of Sevier County, State of Utah, for a good, valuable and adequate consideration, hereby QUITCLAIMS to SOUTHERN UTAH FUEL COMPANY, a Utah Corporation, with principal place of business at Salina, Sevier County, State of Utah, all of its right, title and interest in and to the UNDERGROUND COAL RIGHTS of the following described property:

The West Half of the Northeast quarter of Section 29, Township 21 South, Range 5 East, Salt Lake Base and Meridian, containing 80 acres.

Sevier County hereby expressly reserves all right, title and interest in and to all surface rights and all appurtenances and hereditaments of any kind, nature or type whatsoever save and except for the underground coal rights which are the subject hereof.

IN WITNESS WHEREOF, Sevier County has set its hand and seal this 13th day of NOVEMBER, 1971.



SEVIER COUNTY

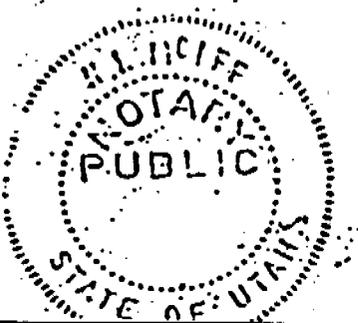
BY DeVon Poulson
CLERK

STATE OF UTAH)
 :
COUNTY OF SEVIER)

DEVON POULSON, being first duly sworn, on oath deposes and says that he is the duly qualified and acting Clerk of the County of Sevier, State of Utah, that he executed the foregoing Deed of Coal Rights as such County Clerk on behalf of Sevier County and pursuant to a resolution of the Board of County Commissioners taken at its regular meeting on November 5, 1971, and that the said deed is the act of Sevier County.

DeVon Poulson

Subscribed and sworn to before me this 13th day of NOVEMBER 1971.



[Signature]
Notary Public
Residing at Richfield, Utah
My commission expires:
JANUARY 30, 1973

Exhibit "E"